
CIRCUIT RULES

of the

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

EFFECTIVE JULY 1, 1976
(Amended to January 1, 1978)

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United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

June 7, 1976

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. PHILIP W. TONE, *Circuit Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*

ORDER

The following rules, to be known as the Circuit Rules of the United States Court of Appeals for the Seventh Circuit, are adopted pursuant to Rule 47, Fed. R. App. P., to replace all Circuit Rules heretofore adopted by this court. The rules shall take effect on July 1, 1976 and shall govern all proceedings thereafter brought and then pending in this court, except to the extent that their application in a particular proceeding then pending would not be feasible or would work injustice or hardship, in which case the former procedure may be followed.

United States Court of Appeals

For the District of Columbia

Case No. 1000

Page 1

THE

UNITED STATES OF AMERICA
vs.
JOHN DOE
Defendant

FILED

The following is a copy of the original of the United States Court of Appeals for the District of Columbia, dated and captioned as above, and is hereby certified to be a true and correct copy of the original as the same appears on the records of the said Court.

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ARTICLE I. PRACTICE RULES

CIRCUIT RULE 1.—Caption

The parties on appeal shall be designated in the title of the cause in this court as they appeared in the district court, with the addition of identification of appellant and appellee, for example, John Smith, Plaintiff-Appellee v. William Jones, Defendant-Appellant.

CIRCUIT RULE 2.—Forwarding Copy of Notice of Appeal

When a notice of appeal to this court is filed with the clerk of the district court, he shall promptly mail to the clerk of this court a copy of the notice of appeal, together with a copy of the docket containing all entries in the cause through and including the notice of appeal. In a criminal appeal, the clerk of the district court shall also complete and include the Criminal Appeal Information Sheet in the form prescribed by this court.

CIRCUIT RULE 3.—Docketing Conferences

After the notice of appeal has been filed in a criminal case, a docketing conference will be set by the court for the purpose of preparing a schedule for the filing of the record (including the transcript) and the briefs and considering the consolidation of related appeals. Conferences will also be held in some civil appeals. At a conference in a civil appeal the court may, *inter alia*, examine its jurisdiction and explore with the parties the possibility of settlement. See Rule 33, Fed. R. App. P.

CIRCUIT RULE 4.—Record on Appeal

(a) *Time for Filing Record.* Within 14 days after the notice of appeal is filed, the clerk of the district court shall prepare and transmit to this court (with the exceptions listed below), the original papers, transcripts filed in the district court, and exhibits received or offered in evidence. Counsel must ensure that exhibits to be included in the record which are not in the possession of the district court clerk are furnished to the clerk within ten days after the filing of the notice of appeal. But in no event shall the clerk of the district court transmit bulky items, currency, securities, liquids, drugs, weapons, or similar items without a specific order of this court. The following items will not be included in a record unless specifically requested by a party by item and date of filing within ten days after the notice of appeal is filed or unless specifically ordered by this court:

briefs and memoranda,
notices of filings,
subpoenas,
summonses,
motions to extend time,
affidavits and admissions of service and mailing,
notices of settings,
depositions and notices, and
jury lists.

Trial or hearing transcripts filed with the clerk of the district court after initial transmission of the record shall be immediately transmitted to this court and filed as a supplemental record without the requirement of this court's order.

(b) *Docketing.* The clerk will notify counsel and parties acting *pro se* of the date the appeal is docketed. The time for filing briefs shall run from that date, regardless of the completeness of the record at the time of docketing, unless the court orders otherwise.

(c) *Transcripts in Criminal Justice Act Cases.* At the time of the return of a verdict of guilty or, in the case of a bench trial, an adjudication of guilt in a criminal case in which the defendant is represented by counsel appointed under the Criminal Justice Act (C.J.A.), counsel for the defendant shall request a transcript of testimony and other relevant proceedings by completing a C.J.A. Form No. 21 and giving it to the district judge. If the district judge believes an appeal is probable, he shall order transcribed so much of the proceedings as he believes necessary for an appeal. The transcript shall be filed with the clerk of the district court within 40 days after the return of a verdict of guilty or, in the case of a bench trial, the adjudication of guilt or within seven days after sentencing, whichever occurs later. If the district judge decides not to order the transcript at that time, he shall retain the C.J.A. Form No. 21 without ruling. If a notice of appeal is filed later, appointed counsel or counsel for a defendant allowed after trial to proceed on appeal in forma pauperis shall immediately notify the district judge of the filing of a notice of appeal and file or renew the request made on C.J.A. Form No. 21 for a free transcript.

(d) *Transcripts in Other Criminal Cases.* Within 10 days after filing the notice of appeal in other criminal cases, the appellant or his counsel shall deposit with the court reporter the estimated cost of the transcript ordered pursuant to Rule 10(b), Fed. R. App. P., unless the district court orders that the transcript be paid for by the United States. A non-indigent appellant must pay his pro rata share of the cost of a transcript prepared at the request of an indigent co-defendant under the Criminal Justice Act

unless the district court determines that fairness requires a different division of the cost. Failure to comply with this paragraph will be cause for dismissal of the appeal.

(e) *Extension of Time.*

(1) After this court has set the date for filing the record, any request for an extension of time must be addressed to this court.

(2) When an extension of time longer than 30 days is sought for the filing of the record on appeal because the transcript of proceedings is not completed, the motion for extension (i) shall be accompanied by a letter from the court reporter stating the reasons for any previous delay, the date counsel requested the preparation of the transcript, and the reasons for further extension and (ii) shall include a statement of counsel certifying that the request has been brought to the attention of, and acted upon by, either the district judge who tried the case or the chief judge of the district.

(f) *Indexing of Transcript.* The transcript of proceedings to be transmitted to this court as part of the record on appeal (and any copies prepared for the use of the court or counsel in the case on appeal) shall be bound by the reporter in a volume or volumes, with the pages consecutively numbered throughout all volumes. The transcript of proceedings, or the first volume thereof, shall contain a suitable index, which shall refer to the number of the volume as well as the page, shall be cumulative for all volumes, and shall include the following information:

(1) An alphabetical list of witnesses, giving the pages on which the direct and each other examination of each witness begins.

(2) A list of exhibits by number, with a brief description of each exhibit indicating the nature of its contents, and with a reference to the pages of the transcript where each exhibit has been identified, offered, and received or rejected.

(3) A list of other significant portions of the trial such as opening statements, arguments to the jury, and instructions, with a reference to the page where each begins.

When the record includes transcripts of more than one trial or other distinct proceeding, and it would be cumbersome to apply this paragraph to all the transcripts taken together as one, the rule may be applied separately to each transcript of one trial or other distinct proceeding.

(g) *Withdrawal of Record.* During the time allowed for the preparation and filing of a brief or petition for rehearing, an attorney for a party or a party acting *pro se* may withdraw the record upon giving a receipt to

the clerk, except that original exhibits certified to this court from a district court or from a government agency may not be withdrawn but may be examined only in the clerk's office. The party who has withdrawn the record may not file a brief or petition for rehearing until the record has been returned. Except as provided above, the record shall not be taken from the clerk's office without leave of court on written motion. Failure of a party to return the record to the clerk may be treated as contempt of court. When the party withdrawing the record is incarcerated, the clerk, on order of the court, will send the record to the warden of the institution with the request that the record be made available to the party under supervised conditions and be returned to this court before a specified date.

CIRCUIT RULE 5.—Appearance

An attorney for a party to an appeal or a party desiring to appear without counsel must file a written appearance with the clerk within 10 days after the docketing of the appeal. An attorney retained or appointed after that time shall file an additional appearance within 10 days after his retention or appointment. The appearance shall be captioned in the case and shall include the name of the party or parties represented and the name, address, and telephone number of the attorney or the party appearing *pro se*. An attorney's appearance shall be in his individual name but shall also show the name of any law firm or public or quasi-public legal office with which he is associated. Copies of court notices, orders, or opinions will be sent to persons who have filed appearances at their law firms or the legal offices with which they are associated. An attorney may not withdraw from the representation of a party without consent of the court.

CIRCUIT RULE 6.—Motions

(a) *Oral Argument Not Favored.* Oral argument will not be heard on any motion unless ordered by the court.

(b) *Motions for Stays, Injunctions, and Bail Pending Appeal.* A motion in this court for bail pending appeal under Rule 9(b), Fed. R. App. P., or for a stay or injunction pending appeal under Rule 8(a) of those rules shall contain a statement of the reasons given by the district judge for denying the relief requested in the motion. Filing with the motion a copy of the order or memorandum of decision in which the reasons were stated, or if they were stated orally in open court, a copy of the transcript of proceedings, will constitute compliance with this rule and is preferred; but, in an emergency, if such a copy is not available, counsel's statement of the reasons given by the district court will suffice.

**CIRCUIT RULE 7.—Summary Disposition of Certain Appeals by
Convicted Persons; Waiver of Appeal**

(a) *Withdrawal of Court-Appointed Counsel.* When court-appointed counsel representing a convicted person in a proceeding to review the conviction files a brief characterizing an appeal as frivolous and moves to withdraw (see *Anders v. California*, 386 U.S. 738 (1967)), he shall file with the brief a proof of service which also indicates the current address of the client. Except as provided in paragraph (e) of this rule, the clerk shall then send to the client by certified mail, return receipt requested, a copy of the brief and motion, with a notice in substantially the form set out in Appendix I to these rules. The same procedures shall be followed by court-appointed counsel and the clerk when a motion to dismiss the appeal has been filed by the appellee and the appellant's counsel believes that any argument that could be made in opposition to the motion would be frivolous.

(b) *Notice of Motion to Dismiss Pro Se Appeal.* When a convicted person appears *pro se* in a proceeding to review his conviction, and the government moves to dismiss the appeal for a reason other than failure to file a brief on time, the clerk shall, unless paragraph (e) of this rule applies, send to the convicted person by certified mail, return receipt requested, a copy of the motion with a notice in substantially the form set out in Appendix II to these rules.

(c) *Dismissal If No Response.* If no response to a notice under paragraph (a) or (b) of this rule is received within 30 days after the mailing, the appeal may be dismissed.

(d) *Voluntary Waiver of Appeal.* Notwithstanding the preceding paragraphs, if the convicted person consents to dismissal of his appeal after consultation with his attorney, the appeal may be dismissed upon the filing of a motion accompanied by an executed acknowledgment and consent in substantially the form set out in Appendix III to these rules.

(e) *Incompetent Appellant.* If, in a case in which paragraph (a) or (b) of this rule would otherwise be applicable, the convicted person has been found incompetent or there is reason to believe he is incompetent, the motion shall so state and the matter shall be referred directly to the court by the clerk for such action as law and justice may require.

**CIRCUIT RULE 8.—Extensions of Time to File Briefs and Failure to
File Timely Briefs**

(a) *Extensions of Time.* Extensions of time to file briefs are not favored. A request for an extension of time shall be in the form of a motion

supported by affidavit. The date the brief is due shall be stated in the motion. The affidavit must disclose facts which establish to the satisfaction of the court that with due diligence, and giving priority to the preparation of the brief, it will not be possible to file the brief on time.

In addition, if the time for filing the brief has been previously extended, the affidavit shall set forth the filing date of any prior motions and the court's ruling thereon. All factual statements required by this rule shall be set forth with specificity. Generalities, such as that the purpose of the motion is not for delay, or that counsel is too busy, will not be sufficient.

Grounds that may merit consideration are:

(1) Engagement in other litigation, provided such litigation is identified by caption, number, and court, and there is set forth (a) a description of action taken on a request for continuance or deferment of other litigation; (b) an explanation of the reasons why other litigation should receive priority over the case in which the petition is filed; and (c) other relevant circumstances including why other associated counsel cannot either prepare the brief for filing or, in the alternative, relieve the movant's counsel of the other litigation claimed as a ground for extension.

(2) The matter under appeal is so complex that an adequate brief cannot reasonably be prepared by the date the brief is due, provided that the complexity is factually demonstrated in the affidavit.

(3) Extreme hardship to counsel will result unless an extension is granted, in which event the nature of the hardship must be set forth in detail.

The motion shall be filed at least 5 days before the brief is due, unless it is made to appear in the motion that the facts which are the basis of the motion did not exist earlier or were not, or with due diligence could not have been, known earlier to the movant's counsel. Notice of the fact that an extension will be sought must be given to opposing counsel together with a copy of the motion prior to the filing thereof.

In criminal cases, or in other cases in which a party may be in custody (including military service), a statement must be set forth in the affidavit as to the custodial status of the party, including the conditions of his bail, if any.

(b) *Failure of Appellant to File Brief.* When an appellant's original brief is not filed when it is due, the procedure shall be as follows:

(1) *Retained Counsel.* If counsel for the appellant is retained, the clerk shall enter an order directing counsel to show cause within 14 days why the appeal should not be dismissed. If the delay is not satisfactorily

explained within that time and excused by the court, the appeal will be dismissed for want of prosecution.

(2) *Court-Appointed Counsel.* If counsel for the appellant is court-appointed, the appeal shall not be dismissed, but the clerk shall enter an order directing counsel to show cause within 14 days why disciplinary action should not be taken against him. After 14 days, the court will take appropriate action.

(3) *Appellant Not Represented by Counsel.* If the appellant is acting *pro se*, the clerk shall enter an order directing him to show cause within 14 days why his appeal should not be dismissed. After the 14 days, the court will take appropriate action.

(c) *Failure of Appellee to File Brief.* When an appellee's brief is not filed on time, the clerk shall enter an order requiring the appellee to show cause within 14 days why the case should not be treated as ready for oral argument and submission, and the appellee denied oral argument. After the 14-day period, the court will take appropriate action.

CIRCUIT RULE 9.—Briefs

Briefs in this court shall conform with the following requirements in addition to those contained in Fed. R. App. P., Rule 28:

(a) *Table of Contents.* Every brief, including a reply brief and a petition for rehearing, shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with reference to the pages of the brief or petition where they are cited. The table shall contain the argument headings in full.

(b) *Jurisdictional Summary.* The brief of the appellant or petitioner will include, under an appropriate heading, a jurisdictional summary, which will appear before the statement of the case and shall include an explanation of the statutory basis for this court's jurisdiction, as well as other information relevant to jurisdiction, such as whether there has been a certification pursuant to Federal Rule of Civil Procedure 54(b) or 28 U.S.C. § 1292(b).

(c) *Statement of Facts.*

(1) *No Argument or Comment in Statement of Facts.* The statement of the facts relevant to the issues presented for review (Fed. R. App. P., Rule 28(a)(3) and (b)) shall be a fair summary without argument or comment.

(2) *Reference to Record.* No fact shall be stated in the statement of facts unless it is supported by a reference to the page or pages of the record or the appendix where that fact appears.

(d) *Citation of Unreported Opinion.* When a decision not yet reported or reported only in abstract form is cited in a brief or other document filed with the court, a copy of that decision shall be attached to each copy of the document, including those served upon opposing counsel.

(e) *Reply Brief.* A reply brief shall be limited to matters in reply.

(f) *Time for Filing Cross-Appellee's Brief.* In cross-appeals the appellant's reply and cross-appellee's brief shall be filed within 30 days after the filing of the cross-appellant's brief unless otherwise ordered by this court.

(g) *Number of Briefs Required.* The clerk of this court is authorized to accept 15 copies of briefs as substantial compliance with Rule 31(b) of the Federal Rules of Appellate Procedure.

(h) *Oversized Briefs.* A motion to file a brief in excess of the page limitation stated in Rule 28(g), Fed. R. App. P., shall be presented well before the date the brief is due.

(i) *Special Requirements in Certain Actions to Review Administrative Orders.* In a case subject to Title IV, Rule 15, *et seq.*, Fed. R. App. P., in which it is contended that a provision in the order under review based in whole or in part on technological data (*e.g.*, an effluent limitation) is not supported by substantial evidence on the record as a whole, the following special requirements must be observed:

(1) The brief of the party challenging the provision must in a separately designated part of his brief—

- (i) identify each specific provision complained of,
- (ii) briefly summarize and cite the parts of the record pertinent to the provision, and
- (iii) briefly state why those parts of the record do not support the challenged provision.

Absent compliance with these requirements, a challenge to such a provision will not be considered.

(2) In the answering brief, the opposing party must—

- (i) refer specifically to the designated part of his opponent's brief to which he is responding,
- (ii) briefly summarize and cite any additional parts of the record pertinent to the challenged provision and correct or supplement his opponent's summary, and
- (iii) briefly state why the parts of the record summarized support the challenged provision.

Absent compliance with these requirements, the court may remand the case to the agency for further proceedings or take other appropriate action.

(3) Any part of the record referred to in a summary or statement required by subparagraphs (1) or (2) of this paragraph must either be reproduced in the appendix or be brought to this court by a request to transmit under Rule 17(b), Fed. R. App. P. If this requirement is not observed, it will be presumed that the part of the record referred to does not support the summary or statement.

CIRCUIT RULE 10.—Brief of an Amicus Curiae

(a) *Avoiding Unnecessary Repetition.* Before completing the preparation of his brief, counsel for an amicus curiae shall attempt to ascertain the arguments that will be made in the brief of any party whose position the amicus is supporting, with a view to avoiding any unnecessary repetition or restatement of those arguments in the amicus brief.

(b) *Page Limitation.* Except by permission of the court, an amicus brief shall not exceed 20 pages of standard typographic printing or 28 pages of printing by any other process of duplicating or copying.

CIRCUIT RULE 11.—Citation of Additional Authorities

When pertinent and significant authorities come to the attention of a party after his brief (or memorandum on a motion) has been filed, or after oral argument but before decision, he may, without obtaining special leave of court, file with the clerk an original and six copies of a letter addressed to the court citing the additional authorities, mailing a copy to adversary counsel. The letter shall refer either to a page of the brief or to a point orally argued to which the citations pertain but shall contain no argument or explanation. If the additional authority cited is not yet published, a copy thereof shall accompany each copy of the letter.

CIRCUIT RULE 12.—Appendixes

(a) *Required Short Appendix.* A full appendix is not required, but the appellant shall submit, either bound with his brief or as a separate document, an appendix containing the judgment or order under review and any opinion, memorandum of decision, findings of fact and conclusions of law, or oral statement of reasons delivered by the trial court or administrative agency upon the rendering of that judgment or order. It is preferred but not required that the appendix also include any other short excerpts from the record, such as essential portions of the pleading or

charge, disputed provisions of a contract, pertinent patent drawings or pictures, or brief portions of the transcript, that are important to a consideration of the issues raised on appeal. In lieu of an appellant's appendix, the parties may file a stipulated joint appendix or proceed in accordance with paragraphs (a) and (b) or paragraph (c) of Rule 30, Fed. R. App. P. The appellee may file with his brief a supplemental appendix containing material not included in an appendix previously filed. An appendix should not be lengthy, and costs for a lengthy appendix will not be awarded.

(b) *Indexing of Appendix.* If a party elects to file an appendix containing portions of the transcript of proceedings, it shall contain an index of the portions of the transcript contained therein in the form and detail described in Circuit Rule 4(f) as well as a complete table of contents.

CIRCUIT RULE 13.—Certification of Questions of State Law

When the rules of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court, this court, sua sponte or on motion of a party, may certify such a question to the state court in accordance with the rules of that court, and may stay the case in this court to await the state court's decision of the question certified. The certification will be made after the briefs are filed in this court. A party's motion for certification shall be included in his brief.

CIRCUIT RULE 14.—Oral Argument

(a) *Notice to Clerk.* The names of counsel intending to argue orally shall be furnished to the clerk not later than two days before the argument.

(b) *Calendar.*

(1) The calendar for a particular day will generally consist of three appeals scheduled for oral argument at 9:30 a.m., one appeal scheduled for oral argument at 10:30 a.m., and two appeals scheduled for oral argument at 2:00 p.m. The amount of time allotted for oral argument will be set by the chief judge based on the nature of the case. The clerk will notify counsel of the allocation approximately 21 days before the argument. Precedence will be given to the setting of certain types of appeals, such as criminal and habeas corpus, as required by statutes and rules.

(2) Consideration will be given to requests addressed to the clerk by out-of-town counsel to schedule more than one appeal for oral argument the same day in order to minimize travel time and expenses.

(3) Requests by counsel, made in advance of the scheduling of an appeal for oral argument, that the court avoid scheduling the oral argument for a particular day or week will be respected, if possible.

(4) Once an appeal has been scheduled for oral argument, the court will not ordinarily reschedule it. Requests under subparagraphs (2) and (3) of this paragraph should therefore be made as early as possible. Counsel should have in mind that, when practicable, criminal appeals are scheduled for oral argument shortly after the appellant's brief is filed and civil appeals shortly after the appellee's brief is filed.

(c) *Divided Argument Not Favored.* Divided arguments on behalf of a single party or multiple parties with the same interests are not favored by the court. When such arguments are nevertheless divided or when more than one counsel argue on the same side for parties with differing interests, the time allowed shall be apportioned between such counsel in their own discretion. If counsel are unable to agree, the court will allocate the time.

(d) *Preparation.* In preparing for oral argument, counsel should be mindful that this court follows the practice of reading briefs prior to oral argument.

(e) *Waiver or Postponement.* Any request for waiver or postponement of a scheduled oral argument must be made by formal motion, with proof of service on all other counsel or parties. Postponements will be granted only in extraordinary circumstances.

CIRCUIT RULE 15.—Motion to Affirm Judgment or Enforce an Agency Order Without Oral Argument

At the time of filing his brief if the case is not yet scheduled for oral argument, an appellee may move for affirmance or an administrative agency may move for enforcement of its order, without oral argument, on the ground that the questions presented are insubstantial. The moving party shall file an original and three copies of the motion and a proposed form of order (not exceeding two pages) which fairly describes the substance of the matter and states the reasons for affirmance or enforcement. The movant shall also file fifteen copies of his brief. The failure to file such motion, however, shall not be treated as an admission that substantial questions are presented. A response to the motion may be included in a brief.

CIRCUIT RULE 16.—Petitions for Rehearing

(a) *Number of Copies.* Fifteen copies of a petition for rehearing shall be filed except that 25 shall be filed if the petitioner suggests rehearing in banc.

(b) *Required Statement for Suggestion of Rehearing In Banc.* Suggestions that an appeal be reheard in banc shall state in a concise sentence at the beginning of the petition why the appeal is of exceptional importance or with what decision of the United States Supreme Court, this court, or another court of appeals the panel decision is claimed to be in conflict.

(c) *Time for Filing When Agency Order Is Enforced.* The date on which the court enters an order or files an opinion holding that an agency order should be wholly or partially enforced is the date of the "entry of judgment" for the purpose of starting the running of the 14 days for filing a petition for rehearing in accordance with Rule 40(a), Fed. R. App. P., notwithstanding the fact that a formal detailed judgment is entered at a later date.

(d) *Time for Filing After Decision From the Bench.* The 14-day time limit for filing a petition for rehearing shall run from the date of this court's written order following a decision from the bench.

(e) *Rehearings Sua Sponte Before Decision.* A proposed opinion approved by a panel of this court adopting a position which would overrule a prior decision of this court or create a conflict between or among circuits shall not be published unless it is first circulated among the active members of this court and a majority of them do not vote to rehear in banc the issue of whether the position should be adopted. In the discretion of the panel, a proposed opinion which would establish a new rule of procedure may be similarly circulated before it is issued. When the position is adopted by the panel after compliance with this procedure, the opinion, when published, shall contain a footnote worded, depending on circumstances, in substance as follows:

This opinion has been circulated among all judges of this court in regular active service. (No judge favored, or A majority did not favor) a rehearing in banc on the question of (*e.g.*, overruling *Doe v. Roe*.)

CIRCUIT RULE 17.—Stay of Mandate or Execution of Judgment Enforcing Administrative Order

(a) *Mandate Will Not Be Stayed Without a Specific Substantiated Showing.* In the interest of minimizing unnecessary delay in the administration of justice, this court's mandate will normally issue 21 days after decision or seven days after the denial of the petition for rehearing, whichever is later. The mandate will not be stayed, regardless of the filing in the Supreme Court of a petition for certiorari before the date for issuance of the mandate, except upon a specific motion substantiated by a showing, or an independent determination by the court, of probable cause

to believe that the petition for certiorari which will be or has been filed is not or will not be frivolous or filed merely for delay.

(b) *Time for Filing Motion to Stay.* A motion to stay the mandate must be filed prior to the regularly scheduled date for issuance of the mandate.

(c) *Stay of Execution of Judgment Enforcing Administrative Order Subject to Same Requirement as Stay of Mandate.* Execution of a judgment enforcing an order of an administrative agency will be stayed only on the conditions provided in subparagraph (a) with respect to a mandate.

(d) *Notice to Clerk of Filing Petition for Certiorari.* An attorney filing a petition for certiorari or notice of appeal with the Supreme Court shall, on the date it is mailed or filed, notify the clerk of this court by telephone of the mailing or filing.

CIRCUIT RULE 18.—Reassignment of Remanded Cases

Whenever a case tried in a district court is remanded by this court for a new trial, it shall be reassigned by the district court for trial before a judge other than the judge who heard the prior trial unless the remand order directs or all parties request that the same judge retry the case. In appeals which are not subject to this rule by its terms, this court may nevertheless direct in its opinion or order that this rule shall apply on remand.

CIRCUIT RULE 19.—Remands from Supreme Court

When the Supreme Court remands a case to this court for further proceedings, counsel for the parties shall, within 21 days after the issuance of that court's mandate, file statements of their positions as to the action which ought to be taken by this court on remand.

[CIRCUIT RULE NUMBERS 20 THROUGH 25 ARE RESERVED FOR FUTURE USE.]

ARTICLE II. GENERAL RULES

CIRCUIT RULE 26.—Fees

(a) *Fees To Be Collected By The Clerk.* The fees to be collected by the clerk are as follows:

(1) For docketing a case on appeal or review, or docketing any other proceeding, \$50.00. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint

notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.

(2) For every search of the records of the court and certifying the results of the same, \$2.00.

(3) For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, \$1.00.

(4) For reproducing any record or paper, 50 cents per page. This fee does not include certification.

(5) For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when the copy is furnished by the person requesting certification. \$1.00 per page or fraction thereof. This fee is in addition to the fee for certification.

(6) For each printed copy of any opinion, including any separate and dissenting opinions in the case, regardless of whether the copy is certified, \$2.00, but no charge shall be assessed for:

- (i) Copies of opinions furnished to subscribers under any opinion subscription arrangement that may be established pursuant to order of the court,
- (ii) A copy of the opinion furnished to each party of record in the case,
- (iii) Copies of opinions furnished those appearing upon a "Public Interest List" established by order of the court in the interest of providing proper and adequate media of dissemination to the general public.

No fees for services other than those above prescribed shall be charged or collected by the clerk.

(b) *Fees To Be Paid In Advance.* The clerk shall not be required to docket any proceeding or perform any other service until all fees due to him have been paid, except at the direction of a judge of this court or at the instance of a party who is entitled to proceed without prepayment of fees.

(c) *Dismissal of Appeal For Failure to Pay Docketing Fee.* If a proceeding is docketed without prepayment of the docketing fee, the appellant shall pay the fee within 14 days after docketing. If he fails to do so, the clerk is authorized to dismiss the appeal.

CIRCUIT RULE 27.—Attorneys

(a) *Admission Procedure.* An applicant for admission to the bar of this court shall file with the clerk an application on the form furnished by the

clerk. The oath or affirmation thereon may be taken before any officer authorized by federal or state law to administer an oath. When an appropriate application and motion have been filed and fee tendered, if a fee be required, the clerk shall present the papers to an active or senior circuit judge for action in chambers unless the applicant requests admission in open court. If admission is in open court the applicant must appear in person and the sponsor shall make an oral motion in support of the written application. If admission is in chambers, the applicant and sponsor need not appear.

(b) *Admission Fees.* The prescribed fee for admission is \$15.00, except that attorneys who have been appointed by the district court or this court to represent a party on appeal in forma pauperis, law clerks to judges of this court or the district courts, and attorneys employed by the United States or any agency thereof need not pay the fee. The clerk shall receive the fee as trustee of the lawyers' fund and shall deposit it in a bank designated by the court. Payments from the fund shall be made for the purchase of law books, for library conveniences, or other court purposes, by checks duly signed by the clerk as trustee and countersigned by two judges of this court.

(c) *Government Attorneys.* Attorneys for any federal, state or local government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.

(d) *Striking a Name from the Roll of Attorneys.* Whenever it is shown to this court that any member of its bar has been disbarred or suspended from practice, or his name has been stricken from the roll of attorneys, in any state or the District of Columbia, he will be forthwith suspended from practice before this court. He will thereupon be afforded the opportunity to show cause, within 30 days, why his name should not be stricken from the roll of attorneys admitted to practice before this court. Upon his response to the rule to show cause, or upon the expiration of the 30 days if no response is made, this court will enter an appropriate order.

CIRCUIT RULE 28.—Prohibition Of Photographs and Broadcasts

The taking of photographs in, or radio or television broadcasting from, the courtroom or any other place on the 27th floor or judges' chambers or corridors adjacent thereto on the 26th floor of the Federal Courthouse located at 219 South Dearborn Street, Chicago, Illinois, without permission of the court, is prohibited.

CIRCUIT RULE 29.—Advisory Committee

The circuit council shall appoint an Advisory Committee to provide a forum for continuing study of the procedures of the court and to serve as a conduit between members of the bar who have suggestions for change and the court, which retains ultimate responsibility for effectuating change. The committee shall consist of one district judge, one attorney, and one law school professor from each state of the circuit, Illinois, Indiana, and Wisconsin, and, as *ex officio* members, the President and First Vice-President of the Bar Association of the Seventh Federal Circuit, the Circuit Executive, the Senior Staff Attorney, and the Clerk of this Court.

The Advisory Committee shall select its own chairman, promulgate its own rules, and call its own meetings. From time to time, as it deems necessary or advisable, it shall make recommendations to the circuit council or to the court. Suggestions for consideration by the Advisory Committee may be filed with the Clerk of this Court.

[CIRCUIT RULE NUMBERS 30 THROUGH 34 ARE RESERVED FOR FUTURE USE.]

ARTICLE III. PUBLICATION RULE

CIRCUIT RULE 35.

The following rule is the Plan for Publication of Opinions of the Seventh Circuit promulgated pursuant to resolution of the Judicial Conference of the United States:

(a) *Policy.* It is the policy of this circuit to reduce the proliferation of published opinions.

(b) *Publication.* The court may dispose of an appeal by an order or by an opinion, which may be signed or per curiam. Orders shall not be published and opinions shall be published.

(1) "Published" or "publication" means:

- (i) Printing the opinion as a slip opinion;
- (ii) Distributing the printed slip opinion to all federal judges within the circuit, legal publishing companies, libraries and other regular subscribers, interested United States attorneys, departments and agencies, and the news media;
- (iii) Permitting publication by legal publishing companies as they see fit; and
- (iv) Unlimited citation as precedent.

(2) Unpublished orders:

- (i) Shall be typewritten and reproduced by copying machine;
- (ii) Shall be distributed only to the circuit judges, counsel for the parties in the case, the lower court judge or agency in the case, and the news media, and shall be available to the public on the same basis as any other pleading in the case;
- (iii) Shall be available for listing periodically in the Federal Reporter showing only title, docket number, date, district or agency appealed from with citation of prior opinion (if reported) and the judgment or operative words of the order, such as "affirmed," "enforced," "reversed," "reversed and remanded," and so forth;
- (iv) Except to support a claim of *res judicata*, collateral estoppel or law of the case, shall not be cited or used as precedent (a) in any federal court within the circuit in any written document or in oral argument or (b) by any such court for any purpose.

(c) *Guidelines for Method of Disposition.*

(1) Published opinions:

Shall be filed in signed or per curiam form in appeals which

- (i) Establish a new or change an existing rule of law;
- (ii) Involve an issue of continuing public interest;
- (iii) Criticize or question existing law;
- (iv) Constitute a significant and non-duplicative contribution to legal literature
 - (A) by a historical review of law;
 - (B) by describing legislative history; or
 - (C) by resolving or creating a conflict in the law; or
- (v) Reverse a judgment or deny enforcement of an order when the lower court or agency has published an opinion supporting the order.

(2) Unpublished orders:

- (i) May be filed after an oral statement of reasons has been given from the bench and may include only, or little more than, the judgment rendered in appeals which
 - (A) are frivolous or
 - (B) present no question sufficiently substantial to require explanation of the reasons for the action taken, such as where

- (aa) a controlling statute or decision determines the appeal;
- (bb) issues are factual only and judgment appealed from is supported by evidence;
- (cc) order appealed from is nonappealable or this court lacks jurisdiction or appellant lacks standing to sue; or

- (ii) May contain reasons for the judgment but ordinarily not a complete nor necessarily any statement of the facts, in appeals which
 - (A) are not frivolous but
 - (B) present arguments concerning the application of recognized rules of law, which are sufficiently substantial to warrant explanation but are not of general interest or importance.

(d) *Disposition is to be by Order or Opinion.*

(1) The determination to dispose of an appeal by unpublished opinion shall be made by a majority of the panel rendering the decision.

(2) The requirement of a majority represents the policy of this circuit. Notwithstanding the right of a single federal judge to make an opinion available for publication, it is expected that a single judge will ordinarily respect and abide by the opinion of the majority in determining whether to publish.

(3) Any person may request by motion that a decision by unpublished order be issued as a published opinion. The request should state the reasons why the publication would be consistent with the guidelines for disposition of appeals as set forth in this rule.

APPENDIX I

FORM OF NOTICE FOR DEFENDANT COUNSEL'S
MOTION FOR LEAVE TO WITHDRAW UNDER
CIRCUIT RULE 7(a)

To:
(Name)

.....
(Street Address or Prison Box)

.....
(City, State, Zip Code)

You are the appellant in a case now pending in this court:

Case No.

.....
v.

.....

Your attorney filed a brief on, 19, in which he states that in his opinion your appeal is frivolous and requests that he be allowed to withdraw from the case. Please be advised as follows:

- 1) You have 30 days from the date this notice was mailed in which to raise any points that you choose which show why your conviction should be set aside.
- 2) If you do not respond within the 30 days, the court may affirm or dismiss your appeal. An affirmance or dismissal would mean that your case would be finally decided against you.
- 3) If you want to make a showing why the court should not affirm or dismiss your appeal and believe that there is a very good reason why you will not be able to file your objections with the court within the 30-day limit, you should *immediately* write to the court and ask for additional time up to 30 days. If additional time is granted, you must file your reasons why the court should not affirm or dismiss your appeal before your additional time expires.

- 4) You do not have a right to another attorney unless this court finds that your showing requires that your case be further briefed or argued. If the court finds that your case should be further briefed or argued, an attorney will be appointed for you who will argue your appeal.

If you want to write to this court, you should address your letters to:

Clerk of the Court
United States Court of Appeals
219 South Dearborn Street
Chicago, Illinois 60604

Be sure, when writing, to show clearly the name and number of your case.

Notice mailed , 19

.....
Deputy Clerk, U.S. Court of Appeals

Attorney for appellant

.....
(Name)

.....
(Street Address)

.....
(City, State, Zip Code)

.....
(Area Code and Telephone Number)

APPENDIX II

FORM OF NOTICE FOR MOTION FOR
DISMISSAL UNDER CIRCUIT RULE 7(b)

IMPORTANT NOTICE

To:
(Name)

.....
(Street Address or Prison Box)

.....
(City, State, Zip Code)

You are the appellant in a case now pending in this court:

Case No.

.....
v.
.....

A motion was filed by the opposing party on,
19..., which asks the court to dismiss your appeal. You have 30 days in
which to answer the motion. Please be advised as follows:

- 1) You have a right to answer. You can either agree to the requested dismissal or object to the motion.
- 2) If you object, you should explain your objections carefully and show why you contend the court should hear your case.
- 3) If you agree that your case should be dismissed, you should write the court immediately that you agree.
- 4) If you do not respond within 30 days after this notice was mailed, the court may affirm or dismiss your appeal. An affirmance or dismissal would mean that your case would be finally decided against you.

- 5) If you want to file objections and feel that there is a very good reason why you will not be able to file your objections with the court within the 30-day limit, you should *immediately* write to the court and ask for additional time up to 30 days. If additional time is granted, you must file your objections before your additional time expires.
- 6) If you are appealing from a conviction and upon receiving notice of motion for dismissal of your appeal you desire an attorney, you should immediately
 - (a) employ an attorney if you can afford one; or
 - (b) request this court to appoint an attorney for you if you cannot afford one.

The court will appoint an attorney if it concludes that your appeal is not frivolous.

If you want to write to this court, you should address your letters to:

Clerk of the Court
United States Court of Appeals
219 South Dearborn Street
Chicago, Illinois 60604

Be sure, when writing, to show clearly the name and number of your case.

Notice mailed, 19....

.....
Deputy Clerk, U.S. Court of Appeals

Attorney for appellant

.....
(Name)

.....
(Street Address)

.....
(City, State, Zip Code)

.....
(Area Code and Telephone Number)

APPENDIX III

FORM OF ACKNOWLEDGEMENT OF ATTORNEY'S
MOTION FOR DISMISSAL AND CONSENT TO
THE DISMISSAL OF THE APPEAL

Case No.

.....

v.

.....

To: Clerk of the Court
United States Court of Appeals
219 South Dearborn Street
Chicago, Illinois 60604

I have been informed by my attorney of his intention to move to dis-
miss my appeal.

I concur in his decision and hereby waive all rights to object or raise
any points on appeal.

.....

(Name)

.....

(Street Address or Prison Box)

.....

(City, State, Zip Code)

IMPORTANT NOTICE

CONCERNING SIXTH CIRCUIT POLICY

Due to the constantly increasing caseload in the Sixth Circuit, extensions of time will not be granted except in the most extreme situations. Counsel for the parties **MUST** file briefs, appendices and other papers within the time period allowed by the rules. The time rules are to be respected, complied with and enforced.

On all appeals it is the obligation of counsel for appellant to prepare and file an appendix in accordance with Rule 30 of the Federal Rules of Appellate Procedure.

Our Court construes this rule to require that the date of filing or of entering of each pleading, judgment, decree, order, decision or other document shall be set out at the beginning of that document. Each such document contained in the appendix shall be conformed to the original thereof as to dates and signatures.

Attention of counsel also is directed to the provisions concerning exhibits contained in Rule 10 (a). Counsel for each party should see to it that all exhibits upon which he relies are in the hands of the Clerk of this Court prior to oral argument.

HARRY PHILLIPS
CHIEF JUDGE, UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT